

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.  
20-RC-160089

Date Filed  
9/16/2015

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer  
Vibra Hospital of Sacramento

2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)  
330 Montrose Dr, Folsom, CA 95630

3a. Employer Representative - Name and Title  
Chase Caldwell

3b. Address (If same as 2b - state same)  
Same

3c. Tel. No.  
(916) 351-9151

3d. Cell No.

3e. Fax No.

3f. E-Mail Address  
CCaldwell@VHSacramento.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)  
Acute Care Hospital

4b. Principal product or service  
Healthcare

5a. City and State where unit is located:  
Folsom, CA

5b. Description of Unit Involved  
Included: See Attached

6a. No. of Employees in Unit:  
approx. 100

Excluded: All other classifications, including but not limited to guards, managers, confidential employees and supervisors as defined by the Act.

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐

Check One: ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) by this petition and Employer declined recognition on or about (Date) (If no reply received, so state).  
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state).  
None

8b. Address

8c. Tel. No.

8d. Cell No.

8e. Fax No.

8f. E-Mail Address

8g. Affiliation, if any

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)  
None

10a. Name

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

11b. Election Date(s):  
9/28/15 or 9/29/15

11c. Election Time(s):  
6:00-8:00 am; 12:00-2:00 pm; 6:00-8:00 p.m.

11d. Election Location(s):  
Education Room, basement of Employer premises.

12a. Full Name of Petitioner (including local name and number)  
Service Employees International Union, United Healthcare Workers-West

12b. Address (street and number, city, state, and ZIP code)  
560 Thomas L. Berkley Way, Oakland, CA 94612

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)  
Service Employees International Union

12d. Tel. No.  
(510) 251-1250

12e. Cell No.

12f. Fax No.  
(510) 763-2680

12g. E-Mail Address

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title  
Xochitl A. Lopez

13b. Address (street and number, city, state, and ZIP code)  
1001 Marina Village Parkway, Suite 200, Alameda, CA 94501

13c. Tel. No.  
(510) 337-1001

13d. Cell No.

13e. Fax No.  
(510) 337-1023

13f. E-Mail Address  
xlopez@unioncounsel.net

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)  
Xochitl A. Lopez

Signature  


Title  
Attorney

Date  
September 14, 2015

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment 5b to RC Petition for Representation  
(Description of Unit Involved)

Included:

The Union seeks to represent the following combined unit of service, business office clerical and technical employees:

Accounts Payable  
Payroll/AP  
Reception Desk  
Purchasing  
Clerk  
CNA  
Cook  
CRNA  
Med Staff  
Monitor Tech  
Pharmacy Tech  
Secretary/Monitor Tech  
Unit Secretary  
Phlebotomist  
Kitchen Aid  
Materials Management  
Central Services  
Radiology Techs  
LVN  
Respiratory Therapist



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156



Download  
NLRB  
Mobile App

September 16, 2015

**URGENT**

ccaldwell@vhsacramento.com  
Chase Caldwell  
Vibra Hospital of Sacramento  
330 Montrose Dr  
Folsom, CA 95630-2720

Re: Vibra Hospital of Sacramento  
Case 20-RC-160089

Dear Mr. Caldwell:

Enclosed is a copy of a petition that Service Employees International Union, United Healthcare Workers-West filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

**Investigator:** This petition will be investigated by Field Examiner SAMUEL J. HOFFMANN whose telephone number is (415)356-5167. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (415)356-5180. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Required Posting and Distribution of Notice:** You must post the enclosed Notice of Petition for Election by **September 18, 2015** in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

**Required Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Pacific Time on September 23, 2015**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon Pacific Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

*List(s) of Employees:* The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

*Failure to Supply Information:* Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the

appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM on Thursday, September 24, 2015 at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484, Sacramento, CA**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Other Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);
- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

**Voter List:** If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To

guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlrb.gov](http://www.nlrb.gov). E-Filing your documents places those documents in our official electronic case files. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Frankl', written in a cursive style.

JOSEPH F. FRANKL  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)



## National Labor Relations Board



# NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Service Employees International Union, United Healthcare Workers-West has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 20-RC-160089 seeking an election to become certified as the representative of the employees of Vibra Hospital of Sacramento in the unit set forth below:

Accounts Payable, Payroll/AP, Reception Desk, Purchasing, Clerk, CNA, Cook, CRNA, Med Staff, Monitor Tech, Pharmacy Tech, Secretary/Monitor Tech, Unit Secretary, Phlebotomist, Kitchen Aid, Materials Management, Central Services, Radiology Techs, LVN, Respiratory Therapist

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (415)356-5130.

**THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.**



## National Labor Relations Board







UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20



<b>VIBRA HOSPITAL OF SACRAMENTO</b>  <b>Employer</b>  <b>and</b> <b>SERVICE EMPLOYEES INTERNATIONAL UNION,</b> <b>UNITED HEALTHCARE WORKERS-WEST</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Thursday, September 24, 2015** and on consecutive days thereafter until concluded, at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484, Sacramento, CA, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Vibra Hospital of Sacramento must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on **September 23, 2015**. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: September 16, 2015

*/s/ J.F. Frankl*

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JOSEPH F. FRANKL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Vibra Hospital of Sacramento</b>  <b>Employer</b>  <b>and</b> <b>Service Employees International Union, United</b> <b>Healthcare Workers-West</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
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**AFFIDAVIT OF SERVICE OF: Petition dated September 16, 2015, Notice of Representation Hearing dated September 16, 2015, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on September 16, 2015, I served the above documents by electronic mail, facsimile, and regular mail upon the following persons, addressed to them at the following addresses:

Chase Caldwell  
Vibra Hospital of Sacramento  
330 Montrose Dr  
Folsom, CA 95630-2720  
ccaldwell@vhsacramento.com

Xochitl A. Lopez  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501  
Fax: (510)337-1023

Service Employees International Union,  
United Healthcare Workers-West  
560 Thomas L Berkley Way  
Oakland, CA 94612-1602  
Fax: (510)763-2680

September 16, 2015  
Date

Donna Gentry, Designated Agent of NLRB  
Name

/s/ Donna Gentry  
Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

**Preclusion:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Conduct of Hearing:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

**Official Record:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

**Motions and Objections:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

**Election Details:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

**Oral Argument and Briefs:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlr.gov](http://www.nlr.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. 20-RC-160089	Date Filed September 16, 2015
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**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



Revised 3/21/2011

## NATIONAL LABOR RELATIONS BOARD

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

Vibra Hospital of Sacramento

CASE NUMBER

20-RC-160089

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )****YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)  
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156



Download  
NLRB  
Mobile App

September 16, 2015

**URGENT**

Service Employees International Union,  
United Healthcare Workers-West  
560 Thomas L Berkley Way  
Oakland, CA 94612-1602

Re: Vibra Hospital of Sacramento  
Case 20-RC-160089

Dear Sir or Madam:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Field Examiner SAMUEL J. HOFFMANN whose telephone number is (415)356-5167. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (415)356-5180. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Showing of Interest:** If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM on Thursday, September 24, 2015 at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484, Sacramento, CA**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order

to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Posting and Distribution of Notice:** The Employer must post the enclosed Notice of Petition for Election by **September 18, 2015** in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

**Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Pacific Time on September 23, 2015**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

**Voter List:** If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or

from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

**Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Frankl", written in a cursive style.

JOSEPH F. FRANKL  
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: Xochitl A. Lopez  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501



## National Labor Relations Board



# NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Service Employees International Union, United Healthcare Workers-West has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 20-RC-160089 seeking an election to become certified as the representative of the employees of Vibra Hospital of Sacramento in the unit set forth below:

Accounts Payable, Payroll/AP, Reception Desk, Purchasing, Clerk, CNA, Cook, CRNA, Med Staff, Monitor Tech, Pharmacy Tech, Secretary/Monitor Tech, Unit Secretary, Phlebotomist, Kitchen Aid, Materials Management, Central Services, Radiology Techs, LVN, Respiratory Therapist

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (415)356-5130.

**THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.**



## National Labor Relations Board





UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20



<b>VIBRA HOSPITAL OF SACRAMENTO</b>  <b>Employer</b>  <b>and</b> <b>SERVICE EMPLOYEES INTERNATIONAL UNION,</b> <b>UNITED HEALTHCARE WORKERS-WEST</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at **10:00 AM on Thursday, September 24, 2015** and on consecutive days thereafter until concluded, at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484, Sacramento, CA, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Vibra Hospital of Sacramento must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on **September 23, 2015**. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: September 16, 2015

*/s/ J.F. Frankl*

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JOSEPH F. FRANKL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Vibra Hospital of Sacramento</b>  <b>Employer</b>  <b>and</b> <b>Service Employees International Union, United</b> <b>Healthcare Workers-West</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
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**AFFIDAVIT OF SERVICE OF: Petition dated September 16, 2015, Notice of Representation Hearing dated September 16, 2015, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on September 16, 2015, I served the above documents by electronic mail, facsimile, and regular mail upon the following persons, addressed to them at the following addresses:

Chase Caldwell  
Vibra Hospital of Sacramento  
330 Montrose Dr  
Folsom, CA 95630-2720  
ccaldwell@vhsacramento.com

Xochitl A. Lopez  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501  
Fax: (510)337-1023

Service Employees International Union,  
United Healthcare Workers-West  
560 Thomas L Berkley Way  
Oakland, CA 94612-1602  
Fax: (510)763-2680

September 16, 2015  
\_\_\_\_\_  
Date

Donna Gentry, Designated Agent of NLRB  
\_\_\_\_\_  
Name

/s/  
\_\_\_\_\_  
Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

*Purpose of Hearing:* The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

*Issues at Hearing:* Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

**Preclusion:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Conduct of Hearing:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

**Official Record:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

**Motions and Objections:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

**Election Details:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

**Oral Argument and Briefs:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, [www.nlr.gov](http://www.nlr.gov), is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

**Note:** *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.*

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No. 20-RC-160089	Date Filed September 16, 2015
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**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.  
**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Revised 3/21/2011

## NATIONAL LABOR RELATIONS BOARD

## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

Vibra Hospital of Sacramento

CASE NUMBER

20-RC-160089

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7. A. PRINCIPAL LOCATION:

B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)  
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months**? If yes, specify date: \_\_\_\_\_

10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

VIBRA HEALTHCARE OF SACRAMENTO

and

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED  
HEALTHCARE WORKERS - WEST

CASE 20-RC-160089

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☐ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF \_\_\_\_\_

Vibra Healthcare

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Bruce D. Bagley, Esq.

MAILING ADDRESS: McNees Wallace & Nurick LLC, PO Box 1166, Harrisburg, PA 17108-1166

E-MAIL ADDRESS: b bagley@mwn.com

OFFICE TELEPHONE NUMBER: 717-237-5338

CELL PHONE NUMBER: \_\_\_\_\_ FAX: 717-260-1661

SIGNATURE: \_\_\_\_\_

DATE: September 17, 2015

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

<b>VIBRA HOSPITAL OF SACRAMENTO</b>  <b>Employer</b>  <b>and</b>  <b>SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS- WEST</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
--	--------------------------

**ORDER RESCHEDULING HEARING**

**IT IS HEREBY ORDERED** that the hearing in the above-entitled matter is rescheduled from September 24, 2015 at 10:00 AM to 10:00 AM on **Friday, September 25, 2015** at the U.S. Post Office and Courthouse, 801 "I" Street, Room 484, Sacramento, CA. The hearing will continue on consecutive days until concluded.

The Statement of Position in this matter must be filed with the Regional Director and served on the parties listed on the petition by no later than **noon** Pacific time on **September 23, 2015**. The Statement of Position may be e-Filed but, unlike other e-Filed documents, must be filed by noon Pacific time on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: September 21, 2015

*/s/ Joseph Frankl*

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JOSEPH F. FRANKL  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

<b>VIBRA HOSPITAL OF SACRAMENTO</b>  <b>Employer</b>  <b>and</b>  <b>SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS- WEST</b>  <b>Petitioner</b>	<b>Case 20-RC-160089</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Order Rescheduling Hearing, dated  
September 21, 2015.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **September 21, 2015**, I served the above-entitled document(s) by **facsimile and regular mail** upon the following persons, addressed to them at the following addresses:

Chase Caldwell , Employer Representative Vibra Hospital of Sacramento 330 Montrose Dr Folsom, CA 95630-2720	Bruce D. Bagley , ESQ. McNees, Wallace & Nurick LLC P.O. Box 1166 100 Pine Street Harrisburg, PA 17108
Service Employees International Union, United Healthcare Workers-West 560 Thomas L Berkley Way Oakland, CA 94612-1602	Xochitl A. Lopez , ESQ. Weinberg, Roger & Rosenfeld 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501

September 21, 2015

Date

Donna Gentry, Designated Agent of NLRB

Name

/s/ Donna Gentry

Signature



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156

September 24, 2015

Bruce D. Bagley, ESQ.  
McNees, Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108

Xochitl A. Lopez, ESQ.  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501

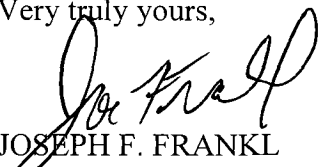
Re: Vibra Hospital of Sacramento  
Case 20-RC-160089

Dear Mr. Bagley, Ms. Lopez:

Enclosed is a copy of the election agreement that contains the terms agreed to by the parties and which I approved in this case. Due to a clerical error, the Region inadvertently enclosed an incorrect version of the election agreement with my September 23, 2015 letter. Please disregard that election agreement. All other information contained in my September 23, 2015 letter remains applicable.

If you have any questions, please feel free to contact Field Examiner Samuel Hoffmann at telephone number (415)356-5167 or by email at [samuel.hoffmann@nlrb.gov](mailto:samuel.hoffmann@nlrb.gov). The cooperation of all parties is sincerely appreciated.

Very truly yours,



JOSEPH F. FRANKL  
Regional Director

Enclosure

1. Approved Election Agreement

cc: Vibra Hospital of Sacramento  
330 Montrose Dr  
Folsom, CA 95630-2720

Service Employees International Union,  
United Healthcare Workers-West  
560 Thomas L Berkley Way  
Oakland, CA 94612-1602

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Vibra Hospital of Sacramento, LLC**

**Case 20-RC-160089**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Vibra Hospital of Sacramento, LLC, a Delaware limited liability corporation with a facility located at 330 Montrose Drive in Folsom, California, is engaged in the business of providing long term acute care services. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5,000 which originated from points directly outside the State of California.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATE: October 7, 2015**

**HOURS: 6:30 AM to 8:30 AM  
and  
2:00 PM to 3:30 PM  
and  
6:30 PM to 8:00 PM**

**PLACE: The Education Room, located in the basement of the Employer's facility located at 330 Montrose Drive in Folsom, California.**

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service employees, business office clerical employees, maintenance employees, and technical employees (including CNAs, monitor technicians, unit clerks, LPNs, LVNs, operating room technicians, food service employees, cooks, respiratory therapists, phlebotomists, pharmacy technicians, EKG EEG technicians, radiology technicians, ultrasound technicians, medical records coders, receptionists,

Initials: \_\_\_\_\_

materials clerks, and materials management clerks) located at the Employer's facility in Folsom, California; but excluding all other employees, including: professional employees, registered nurses, confidential employees, guards, and supervisors as defined by the Act.

**Others permitted to vote:** The parties have agreed that medical records coordinators, accounts payable coordinators, maintenance technicians, and engineer may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending September 12, 2015**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

Initials: \_\_\_\_\_

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Service Employees International Union, United Healthcare Workers-West?" The choices on the ballot will be "Yes" or "No"

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**10. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

**11. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

Initials: \_\_\_\_\_



**12. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Vibra Hospital of Sacramento, LLC

(Employer)

Service Employees International Union,  
United Healthcare Workers-West

(Petitioner)

By /s/ Bruce D. Bagley 9/23/15  
(Name) (Date)

By /s/ Lilly Vallee 9/23/15  
(Name) (Date)

\_\_\_\_\_  
(Union)

**Recommended:** /s/ Samuel Hoffmann 9/23/15  
SAMUEL J. HOFFMANN, Field Examiner  
(Date)

By \_\_\_\_\_  
(Name) (Date)

**Date approved:** 9/23/15

/s/ J.F. Frankl  
**Regional Director, Region 20**  
**National Labor Relations Board**



**United States of America**  
**National Labor Relations Board**  
**NOTICE OF ELECTION**



**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

**SPECIAL ASSISTANCE:** Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

**PROCESS OF VOTING:** Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

**CHALLENGE OF VOTERS:** If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. DO NOT SIGN YOUR BALLOT. Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.



**United States of America  
National Labor Relations Board  
NOTICE OF ELECTION**



**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

All full-time and regular part-time service employees, business office clerical employees, maintenance employees, and technical employees (including CNAs, monitor technicians, unit clerks, LPNs, LVNs, operating room technicians, food service employees, cooks, respiratory therapists, phlebotomists, pharmacy technicians, EKG EEG technicians, radiology technicians, ultrasound technicians, medical records coders, receptionists, materials clerks, and materials management clerks) located at the Employer's facility in Folsom, California; during the payroll period ending September 12, 2015.

**Others permitted to vote:** The parties have agreed that medical records coordinator's, accounts payable coordinators, maintenance technicians, and engineer may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

All other employees, including: professional employees, registered nurses, confidential employees, guards, and supervisors as defined by the Act.

**DATE, TIME AND PLACE OF ELECTION**

Wednesday, October 7, 2015	6:30 a.m. to 8:30 a.m. and 2:00 p.m. to 3:30 p.m. and 6:30 p.m. to 8:00 p.m.	The Education Room located in the basement of the Employer's facility located at 330 Montrose Drive, Folsom, CA
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**EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.**

**ALL BALLOTS WILL BE MINGLED AND COUNTED IMMEDIATELY AFTER THE CONCLUSION OF THE LAST VOTING SESSION.**



**United States of America  
National Labor Relations Board  
NOTICE OF ELECTION**



	<p><b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b> 20-RC-160089</p> <p><b>OFFICIAL SECRET BALLOT</b></p> <p>For certain employees of <b>VIBRA HOSPITAL OF SACRAMENTO, LLC</b></p> <p>Do you wish to be represented for purposes of collective bargaining by <b>SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST?</b></p> <p><b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b></p> <table border="1"><tr><td><p><b>YES</b></p><input type="checkbox"/></td><td><p><b>NO</b></p><input type="checkbox"/></td></tr></table> <p><b>DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.</b> If you spoil this ballot, return it to the Board Agent for a new one.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>	<p><b>YES</b></p> <input type="checkbox"/>	<p><b>NO</b></p> <input type="checkbox"/>	
<p><b>YES</b></p> <input type="checkbox"/>	<p><b>NO</b></p> <input type="checkbox"/>			



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

**It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

**The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:**

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

**The National Labor Relations Board protects your right to a free choice.**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (415)356-5130 or visit the NLRB website [www.nlrb.gov](http://www.nlrb.gov) for assistance.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Date Filed  
9/16/2015

Case No. 20-RC-160089

Date Issued 10/7/2015

City Folsom

State CA

Type of Election:  
(Check one:)

(If applicable check  
either or both:)

☒ Stipulation

☐ 8(b) (7)

☐ Board Direction

☐ Mail Ballot

☐ Consent Agreement

☐ RD Direction  
Incumbent Union (Code)

Vibra Hospital of Sacramento, LLC  
Employer

and

Service Employees International Union,  
United Healthcare Workers-West  
Petitioner

## TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 118
2. Number of Void ballots 0
3. Number of Votes cast for Petitioner (see name above) 46
4. Number of Votes cast for \_\_\_\_\_
5. Number of Votes cast for \_\_\_\_\_
6. Number of Votes cast against participating labor organization 43
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 89
8. Number of challenged ballots 4
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 93
10. Challenges are ~~(not)~~ sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for

Petitioner (see name above)

**Determinative Challenges**

For the Regional Director

*X Scott M. Smith*

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer (see name above)

*David D. Bagley, Attorney for Employer*

For Petitioner (see name above)

*William D. Buz*

For

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SOKOL  
BLYTHE MICKELSON  
BARRY E. HINKLE  
JAMES J. WESSER  
ANTONIO RUIZ  
MATTHEW J. GAUGER  
ASHLEY K. IKEDA  
LINDA BALDWIN-JONES  
PATRICIA A. DAVIS  
ALAN G. CROWLEY  
KRISTINA L. HILLMAN \*\*  
EMILY P. RICH  
BRUCE A. HARLAND  
CONCEPCION E. LOZANO-BATISTA  
CAREN P. SENCER  
ANNE I. YEN  
KRISTINA M. ZINNEN  
JANNAH V. MANANSALA  
MANUEL A. BOIGUES \*\*\*  
KERIANNE R. STEELE \*\*  
GARY P. PROVENCHER  
EZEKIEL D. CARDER \*\*\*\*  
MONICA T. GUZAR  
SHARON A. SEIDENSTEIN  
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ROBERT E. SZYKOWNY  
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VINCENT A. HARRINGTON, Of Counsel  
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NINA FENDEL, Of Counsel  
TRACY L. MAINGUY, Of Counsel  
ANA GALLEGOS, Of Counsel  
CHRISTIAN L. RAISNER, Of Counsel  
SANDRA RAE BENSON, Of Counsel  
THEODORE FRANKLIN, Of Counsel

\* Admitted in Hawaii  
\*\* Also admitted in Nevada  
\*\*\* Also admitted in Illinois  
\*\*\*\* Also admitted in New York and Alaska  
\*\*\*\*\* Also admitted in New York and Michigan

October 14, 2015

*Via Electronic Filing*

Mr. Joseph F. Frankl  
Regional Director  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

**Re: Vibra Hospital of Sacramento**  
**Case No. 20-RC-160089**

Dear Mr. Frankl:

The following is SEIU-UHW's Statement of Position regarding the four challenged ballots from the representation election at Vibra Hospital of Sacramento.

**1. (b) (6), (b) (7)(C)**

The employer challenged the ballot of (b) (6), (b) (7)(C), an employee who was included in the employer's voter list. (b) (6), (b) (7)(C) was employed on the payroll eligibility date and the date of the election, therefore there is no question that (b) (6), (b) (7)(C) is eligible to vote. The employer challenges (b) (6), (b) (7)(C)'s eligibility, claiming that on (b) (6), (b) (7)(C) 2015, (b) (6), (b) (7)(C) gave notice of future resignation. However, as (b) (6), (b) (7)(C) would testify (b) (6), (b) (7)(C) was still employed by Vibra Hospital on the date of the election. The Board has consistently held that employees are eligible to vote even when they have given resignation notice prior to the election date. See, e.g., *Gen. Tube Co.*, 141 NLRB 441, 444-45 (1963) *aff'd*, 331 F.2d 751 (6th Cir. 1964) (upholding Regional Director's finding that the "test for determining eligibility is the individual's actual status on the eligibility and election date. It is immaterial that an employee gives notice of quitting prior to an election."); *Crown Mach. Co.*, 205 NLRB 237 (1973) (same). Where the employee "was employed in the unit during the payroll eligibility period and on the date of the election," such "requirements are sufficient, the Board has concluded, to ensure the requisite community of interest with unit employees. [citations] So long as these eligibility requirements are satisfied, an employee is eligible to vote even if the employee intends to quit his employment after the election and does so." *Saint-Gobain Indus. Ceramics, Inc. v. N.L.R.B.*, 310 F.3d 778, 782 (D.C. Cir. 2002); See also *N.L.R.B. v. Res-Care, Inc.*, 705 F.2d 1461, 1471 (7th Cir. 1983) ("[T]he Board's unvarying policy is that any employee may vote, even if he has a fixed intention of quitting immediately after voting.") As such, there is no question that (b) (6), (b) (7)(C) ballot should be counted.



2. (b) (6), (b) (7)(C)

As noted in the Board's letter to the parties, SEIU-UHW timely challenged the validity of a ballot cast by (b) (6), (b) (7)(C). There is no individual named (b) (6), (b) (7)(C) on the voter list. The closest name shown on the voter list provided to the Union has a different first and last name: (b) (6), (b) (7)(C). Accordingly, the Union's challenge should stand because the employer failed to include this voter on the list.

Moreover, even if "(b) (6), (b) (7)(C)" appeared on the voter list, (b) (6), (b) (7)(C) is ineligible because (b) (6), (b) (7)(C) is a supervisor under Section 2(11) of the Act. Vibra employee (b) (6), (b) (7)(C) would testify that (b) (6), (b) (7)(C) has authority to discipline bargaining unit members. In fact, (b) (6), (b) (7)(C) would testify that approximately one week prior to the election, (b) (6), (b) (7)(C) threatened (b) (6), (b) (7)(C) subordinate employees with discipline if they continued to share their work schedules with the Union. Vibra employee, (b) (6), (b) (7)(C) would testify that (b) (6), (b) (7)(C) has authority to assign work as well, since (b) (6), (b) (7)(C) assigns kitchen employees their hours of work and schedule, and employees must submit all time off requests to (b) (6), (b) (7)(C). As such, (b) (6), (b) (7)(C) is a supervisor and not eligible to vote.

3. (b) (6), (b) (7)(C)

Also as noted in the Board's letter, the Board agent challenged the validity of (b) (6), (b) (7)(C) vote. (b) (6), (b) (7)(C) did not appear on the voter list because (b) (6), (b) (7)(C) is not employed in a classification within the petitioned for unit. (b) (6), (b) (7)(C) was and continues to be employed in the title of (b) (6), (b) (7)(C) Union organizer, Luisa Padilla, would testify that (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) was employed as a (b) (6), (b) (7)(C) during the election, and stated that (b) (6), (b) (7)(C) was not currently working in the unit. Vibra employee, (b) (6), (b) (7)(C) would testify that the employer held a staff meeting on approximately September 9, prior to the filing of the Petition, during which Management announced that (b) (6), (b) (7)(C) would be taking the (b) (6), (b) (7)(C) position, replacing someone who left that position permanently. That is the position that (b) (6), (b) (7)(C) held at the time of the election.

The employer agreed to exclude employees such as (b) (6), (b) (7)(C), as the Stipulated Election Agreement specifically states that "all other employees" (including "supervisors") are not eligible. Since (b) (6), (b) (7)(C) was not employed in a classification in the petitioned for unit at the time of the election, under Board law and pursuant to the Stipulated Agreement, (b) (6), (b) (7)(C) is not eligible to vote. *Saltwater, Inc.*, 324 NLRB 343, 343 n. 1 (1997) ("The Board finds employees eligible to vote if they were employed during the payroll period ending immediately prior to the Decision and Direction of Election and who worked on the election day"); *Crown Mach. Co.*, 205 NLRB 237 (1973) ("it is well established that the test for determining eligibility is an individual's actual status on the eligibility and election dates").

Moreover, (b) (6), (b) (7)(C) current (b) (6), (b) (7)(C) position is supervisory, and Vibra has not disputed this. (b) (6), (b) (7)(C) has the authority to discipline and assign work to employees in the bargaining unit, just as (b) (6), (b) (7)(C) predecessor did. Vibra employee (b) (6), (b) (7)(C) would testify that, in (b) (6), (b) (7)(C) capacity as (b) (6), (b) (7)(C) a few days before the election, (b) (6), (b) (7)(C) held captive audience meetings on behalf of Vibra, during which (b) (6), (b) (7)(C) played an anti-Union video and urged workers in the petitioned for unit to vote against the Union. The employer could not lawfully have required (b) (6), (b) (7)(C) to carry out such a meeting if (b) (6), (b) (7)(C) were an eligible voter. Furthermore, as a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) even



Mr. Joseph F. Frankl

October 14, 2015

Page 3

oversees other supervisors at Vibra. (b) (6), (b) (7)(C) would testify that a few days prior to the election, (b) (6), (b) (7)(C) gave orders to a (b) (6), (b) (7)(C), locking the (b) (6), (b) (7)(C) out of (b) (6), (b) (7)(C) area, and identifying (b) (6), (b) (7)(C) as a “supervisor” to the (b) (6), (b) (7)(C).

According to Vibra’s counsel, Vibra’s contention is that (b) (6), (b) (7)(C) is an “interim” supervisor. There is no evidence that (b) (6), (b) (7)(C) is temporarily substituting for another (b) (6), (b) (7)(C). Therefore, any Board decisions finding employees eligible to vote, even though they are temporarily substituting for an absent supervisor, are inapplicable. The employer has also stated that although (b) (6), (b) (7)(C) has been promoted to (b) (6), (b) (7)(C), performance in the position will be reviewed after 90 days, at which time there is a possibility that (b) (6), (b) (7)(C) will be demoted. There are no facts to substantiate this claim. Even if the employer’s claim were true, the mere possibility that (b) (6), (b) (7)(C) may at some undefined point return to the bargaining unit is insufficient to make (b) (6), (b) (7)(C) eligible to vote in this election. *Flat Rate Movers Ltd.*, 357 NLRB No. 112 (2011) (explaining that in seasonal employee context, mere possibility of returning to the unit is not sufficient community of interest with bargaining unit).

The employer had all the information regarding (b) (6), (b) (7)(C) alleged eligibility at the time it provided the voter list to the Union, and failed to include (b) (6), (b) (7)(C) on that list. Accordingly, the employer should not be permitted to pad the unit based on its unilateral actions after the Union filed its petition. At a minimum, Vibra’s inconsistent and self-serving actions should cause the burden to be placed on the employer to prove that (b) (6), (b) (7)(C) should now be considered part of the unit.

4. (b) (6), (b) (7)(C)

Finally, the Board agent also challenged the ballot of (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was not included on the voter list. (b) (6), (b) (7)(C) would testify that (b) (6), (b) (7)(C) is a per diem employee who has worked at least an average of four (4) hours per week in the thirteen weeks preceding the eligibility date. Therefore, (b) (6), (b) (7)(C) is eligible to vote in the election.

All witnesses may be reached by contacting the undersigned at (510) 337-1001. Please do not hesitate to contact me in case of any questions regarding the above.

Sincerely,

/s/ Xochitl A. Lopez

Xochitl A. Lopez

XAI (b) (6), (b) (7)(C)  
opeiu 3 afl-cio(1)  
139508\833879

cc: (b) (6), (b) (7)(C)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20

VIBRA HOSPITAL OF SACRAMENTO, LLC

Employer

and

Case 20-RC-160089

SERVICE EMPLOYEES INTERNATIONAL UNION  
UNITED HEALTHCARE WORKERS-WEST

Petitioner

**ORDER TO OPEN AND COUNT TWO OF  
FOUR DETERMINATIVE CHALLENGED BALLOTS**

Upon a petition filed on September 16, 2015,<sup>1</sup> and pursuant to a Stipulated Election Agreement approved by the Regional Director on September 23, an election by secret manual ballot was conducted on October 7 in the following appropriate collective-bargaining unit:

All full-time and regular part-time service employees, business office clerical employees, maintenance employees, and technical employees (including CNAs, monitor technicians, unit clerks, LPNs, LVNs, operating room technicians, food service employees, cooks, respiratory therapists, phlebotomists, pharmacy technicians, EKG EEG technicians, radiology technicians, ultrasound technicians, medical records coders, receptionists, materials clerks, and materials management clerks) located at the Employer's facility in Folsom, California; but excluding all other employees, including: professional employees, registered nurses, confidential employees, guards, and supervisors as defined by the Act.

Upon the conclusion of the election, the ballots were counted and a copy of the official *Tally of Ballots* was served on each party. The *Tally* showed that 46 employees voted in favor of representation by the Service Employees International Union United

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<sup>1</sup> All dates are calendar year 2015 unless otherwise indicated.

Healthcare Workers-West (Union), that 43 voted against representation by the Union, and that four individuals cast challenged ballots. The challenged ballots are sufficient in number to affect the results of the election.

The Board Agent conducting the election challenged voters (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) because their names did not appear on the eligibility list. The Union challenged voter (b) (6), (b) (7)(C) as a statutory supervisor. The Employer challenged voter (b) (6), (b) (7)(C) on the basis that (b) (6), (b) (7)(C) is no longer in the Employer's employ.

By letter dated October 9, and pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I requested the parties to provide their statements of position with respect to each of the challenges together with their evidence to support their positions. The parties complied. By their position statements, the parties agreed that voters (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are eligible to vote and that their ballots should be opened and counted. The parties continued to dispute whether the ballots of (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) should be counted, with the Union taking the position that these voters are ineligible statutory supervisors and the Employer taking the contrary position.

Thereafter, pursuant to a Stipulation To Open And Count Two of Four Determinative Challenged Ballots ("Stipulation") signed by all parties and approved by me on October 23, the parties stipulated and agreed that the challenges to the votes of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) should be overruled, that their votes be opened and counted, and that a *Revised Tally of Ballots* issued.<sup>3</sup>

Because opening the ballots of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) may eliminate the need for a hearing on the remaining two challenged ballots disputed by the parties and thereby reach a fair and expeditious resolution of this matter, I find that the purposes

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<sup>2</sup> The parties do not agree on the spelling of (b) (6), (b) (7)(C) surname, nor (b) (6), (b) (7)(C) eligibility. For purposes of this Order, I shall spell it as shown.

<sup>3</sup> The parties also waived all rights to an administrative hearing or investigation relating to the eligibility of the two voters; waived all rights to file objections premised on the procedure or effect of the opening and counting of the two voter's ballots; and acknowledged that inasmuch as the counted ballots may render the two remaining challenged ballots non-determinative, a Certification of Representative may result.

and policies of the Act are best effectuated by opening and counting the ballots of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and issuing a *Revised Tally of Ballots* based thereon.

For the reasons stated above, I hereby order that the ballots of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) be opened and counted and a *Revised Tally of Ballots* be issued at the Region 20 Regional office on Tuesday, October 27, at 10 a.m., in the Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400, San Francisco, CA 94103.<sup>4</sup> I invite the parties to attend.

**DATED AT** San Francisco, California, this 23<sup>rd</sup> day of October 2015.

/s/ J. F. Frankl

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Joseph F. Frankl  
Regional Director, Region 20  
National Labor Relations Board  
901 Market Street, Suite 400  
San Francisco, California 94103-1735

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<sup>4</sup> In my October 9 letter requesting evidence relating to the challenged ballots, I preliminarily set a hearing date of October 28 in the event that the challenged ballots raise substantial and material issues of fact. It being impracticable to keep this date, the October 28 hearing date is hereby CANCELED. I will issue a further order setting hearing should one become necessary.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

<b>VIBRA HOSPITAL OF SACRAMENTO, LLC</b>  EMPLOYER  AND  <b>SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST</b>  PETITIONER
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Case No. 20-RC-160089  
Date Issued 10/27/2015

**TYPE OF ELECTION: (Check one:)**

- ☐ Consent Agreement  
☒ Stipulation  
☐ Board Direction  
☐ RD Direction

(Also check box below  
where appropriate)

☐ 8(b) (7)

**REVISED TALLY OF BALLOTS**

(Counting of Challenged Ballots)

The undersigned agent of the Regional Director certifies that the results of counting the challenged ballots directed to be counted by the Regional Director on 10/23/2015 and the addition of these ballots to the original Tally of Ballots, executed on 10/07/2015, were as follows:

	Original Tally	Challenged Ballots Counted	Final Tally
Approximate number of eligible voters	118		
Number of Void ballots	0		
Number of Votes cast for <u>Petitioner (see name above)</u>	46	2	48
Number of Votes cast for _____	----	----	----
Number of Votes cast for _____	----	----	----
Number of Votes cast against participating labor organization(s)	43	0	43
Number of Valid votes counted	89		91
Number of undetermined challenged ballots	4		2
Number of Valid votes counted plus challenged ballots	93		93
Number of Sustained challenges (voters ineligible)			0

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are (not) sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has (not) been cast for Petitioner (see name above)

For the Regional Director



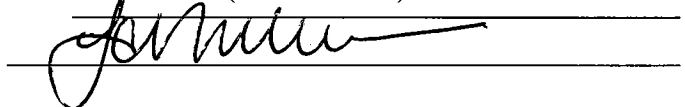
The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating, and the compilation of the Final Tally, were fairly and accurately done, and that the results were as indicated above. We also acknowledge service of this Tally.

For EMPLOYER (see name above)



For \_\_\_\_\_

For PETITIONER (see name above)



For \_\_\_\_\_

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**Vibra Hospital of Sacramento, LLC**

**Employer**

**and**

**Case 20-RC-160089**

**Service Employees International Union, United  
Healthcare Workers-West**

**Petitioner**

**TYPE OF ELECTION: STIPULATED**

**CERTIFICATION OF REPRESENTATIVE**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED  
HEALTHCARE WORKERS-WEST

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

**INCLUDED:** All full-time and regular part-time service employees, business office clerical employees, maintenance employees, and technical employees (including CNAs, monitor technicians, unit clerks, LPNs, LVNs, operating room technicians, food service employees, cooks, respiratory therapists, phlebotomists, pharmacy technicians, EKG EEG technicians, radiology technicians, ultrasound technicians, medical records coders, receptionists, materials clerks, and materials management clerks) located at the Employer's facility in Folsom, California.

**EXCLUDED:** all other employees, including: professional employees, registered nurses, confidential employees, guards, and supervisors as defined by the Act.

However, the medical records coordinators, accounts payable coordinators, maintenance technicians, and the engineer classification are neither included in nor excluded from the bargaining unit covered by this Certification, inasmuch as the parties did not agree on their inclusion or exclusion but agreed to vote them subject to challenge. Their ballots were not determinative, and thus the parties' disagreement over their inclusion or exclusion in the unit was not resolved.



November 6, 2015

/s/ Joseph F. Frankl

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JOSEPH F. FRANKL  
Regional Director, Region 20  
National Labor Relations Board

## NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

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<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.